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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972.

No. 72-220

PHELPS DODGE CORPORATION,

vs. *Petitioner,*

AFL-CIO JOINT NEGOTIATING COMMITTEE FOR PHELPS DODGE CORPORATION, ET AL.,

and

THE NATIONAL LABOR RELATIONS BOARD,

Respondents.

No. 72-359

NATIONAL LABOR RELATIONS BOARD,

vs. *Petitioner,*

AFL-CIO JOINT NEGOTIATING COMMITTEE FOR PHELPS DODGE, ET AL., AND PHELPS DODGE CORPORATION,

Respondents.

BRIEF AMICUS CURIAE ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF THE PETITIONS FOR WRIT OF CERTIORARI.

MILTON A. SMITH,
General Counsel,

OTTO F. WENZLER,
Labor Relations Counsel,
Chamber of Commerce of the United States of America,
1615 H Street, N. W.,
Washington, D. C. 20006,

GERARD C. SMETANA,
925 South Homan Avenue,
Chicago, Illinois 60607,

LAWRENCE M. COHEN,
HERBERT M. BERMAN,
K. BRUCE STICKLER,
LEDERER, FOX AND GROVE,
111 West Washington Street,
Chicago, Illinois 60602,

Attorneys for the Chamber of Commerce of the United States of America.

THE SUPREME COURT PRINTING COMPANY, CHICAGO

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BRIEF AMICUS CURIAE ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.

INTEREST OF THE AMICUS CURIAE.

The Chamber of Commerce of the United States of America (hereafter "the Chamber") files this brief *amicus curiae* to present its views on a case of great significance in the administration of the National Labor Relations Act.[1] Respondent Committee represented to the Board that this is "one of the most important cases—if not the most important case—to come before the Board in many years."[2] The Chamber agrees and, for this reason, submits that this Court should review the instant case.

The issue presented here—whether the Board may conclude that an attempt to obtain agreement on terms and conditions of employment to be generally applicable on a company-wide basis constitutes an impermissible effort to extend the bargaining unit—is of substantial interest to the Chamber.[3] Many of its members deal with unions which represent, as the Committee did here, employees in two or more bargaining units. This case, as the court of appeals modified opinion made clear,[4] is not limited to the particular

1. This brief is filed with the written consent of all parties in accordance with Rule 42(2) of this Court.

2. See the Committee's Brief in support of exceptions to the Board Trial Examiner's Decision, p. 1.

3. The Chamber is a business federation with a membership of more than 3800 state and local chambers of commerce and trade associations. It has an underlying membership of more than five million businessmen and business firms, many of which are engaged in commerce and subject to the Act.

4. In its initial decision, the court did not pass on the question of whether bargaining to impasse on mandatory subjects could be considered evidence of an unlawful objective to expand the bargaining unit. In the court's modified order, however, the court expressly assumed that the Committee's demands were all mandatory items and concluded nevertheless that insistence to impasse upon them was "not evidence of an attempt to merge the bargain-

factual situation here involved; it would substantially alter existing bargaining relationships in each of these other situations as well. As the Board observed in its petition for certiorari (p. 8), the decision would permit unions in numerous industries to unilaterally enlarge bargaining outside the confines of established bargaining units.[5] This is a matter of vital concern to the Chamber and its member organizations. For example, the Chamber recently appeared as an *amicus curiae* in *Allied Chemical Workers* v. *Pittsburg Plate Glass Company*, 404 U. S. 157 (1971), where it successfully requested this Court to confine mandatory bargaining to the active employees in an appropriate unit.

The Chamber has a similar interest in this case and respectfully requests this Court to consider its views.

SUMMARY OF ARGUMENT.

This case presents the Court with board issues of far-reaching legal and economic significance.

First, despite the national controversy generated by the issue of coalition or coordinated bargaining this Court has never had an opportunity to pass on the question. Because of increased union efforts to expand bargaining units, determination by this Court of the questions presented in this

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ing of separate units." App., p. A. 13. Thus, the court not only decided that the Board's decision was not supported by substantial evidence, but was wrong on a material question of law, i.e., whether an improper bargaining object could *ever* be determined where a union does not use improper bargaining means.

5. In addition to the enlarged unit bargaining in the nonferrous metals industries, as shown here, there is a strong likelihood of such bargaining in other major industries, where, as here, there is uniform bargaining by a small number of employers. Examples of such industries are the home products, chemical and oil industries. See William M. Chernesh, *Coalition Bargaining* (University of Pennsylvania Press 1969).

case is imperative. It is apparent, as hereafter noted at pp. 3-5, that the union approach here involved, in view of its approval by the court below, is now being frequently emulated by other powerful unions in major industries. This Court should determine the lawfulness of this new and destructive bargaining tactic.

Second, the decision below alters, without legislative approval, the economic balance of power between employers and unions. As one commentator has suggested, the goal of coalition and related forms of inter-unit bargaining ". . . is to bring about unilaterally an enlargement of the scope of negotiations and of decision-making to embrace a fragmented group of bargaining units that had hitherto negotiated separately."[6] We submit that only Congress, not the courts, can determine whether such a goal is appropriate. As this Court noted in *American Ship Building Co.*, v. *NLRB*, 380 U. S. 300, 317 (1965), citing *N. L. R. B.* v. *Insurance Agents' International Union*, 361 U. S. 477, 497-498 (1960), the Board cannot ". . . introduce some standard of properly 'balanced' bargaining power, or some new distinction of justifiable and unjustifiable, proper and 'abusive' economic weapons into . . . the Act." Economic and social judgments must remain within the discretion of the legislature; they are not within the province of courts or administrative agencies.

Third, the Court below by naively and myopically viewing the Committee's demands sanctioned unilateral enlargement of the bargaining units. The effect was to judicially amend the Act, and disregard the Board's expertise in

6. Hildebrand, *Bargaining Structures and Relative Power*, Report No. 5, *Collective Bargaining: Survival in the 70's* (Industrial Research Unit, Wharton School of Finance & Commerce, University of Pennsylvania 1972), p. 10.

determining the unit in which bargaining is to take place. Moreover, in so doing, the Court below misapplied decisions of this Court, and acted in derogation of the recent decision of this Court in *Pittsburgh Plate Glass*.

ARGUMENT.

A. The Decision Below Will Lead to the Breakdown of the Stable Bargaining Units Envisaged by the Act.

The approval by the Court below of a union charade to engage in enlarged unit bargaining will lead to a breakdown of collective bargaining in numerous multi-unit companies. No longer will employers be required to bargain only within the confines of stable units established in accordance with the Act; rather, simply by following the blueprint drafted by the court below—making mandatory demands which have the intent and effect of enlarging an established unit—a union can extend negotiations to new units without the voluntary employee choice contemplated by our national labor policy. Instead of stabilizing bargaining, this technique will inexorably lead to a severe dislocation of free collective bargaining in contravention of the intent of the Act.

Indeed, a few recent examples clearly illustrate the rapidly increasing utilization of extra unit bargaining with its concommittant reigniting of long and often painfully resolved disputes regarding the appropriate bargaining unit.

Item 1: In negotiations this year between Armstrong Cork Company and a coalition of unions under the leadership of the Industrial Union Department of the AFL-CIO, the unions at numerous locations made bargaining demands,

such as a limited no strike clause, a common company-wide termination date and a "most favored nations" clause, identical to those involved in the instant case. The basis for the unions' demand was expressly stated to be the decision of the court below. The unions thus hoped to accomplish through this device the goal of "coordinated" negotiations, a goal which had already led to violence, strikes, lockouts and the disruption of a previously peaceful relationship. See the affidavit of L. J. Bibri, attached hereto as Appendix A.

Item 2: In another situation which closely parallels the instant case, a coalition composed of the International Brotherhood of Electrical Workers and four of its local affiliates sought to merge all units represented by any member of the coalition in the General Telephone Company of the Southeast into a single unit.[7] As in the instant case, this coalition has demanded, as the condition precedent to the conclusion of any contract, a common expiration of all contracts.

Item 3: In another variant of the instant theme, during recent negotiations between Shell Oil Company and the Oil, Chemical and Atomic Workers International Union, a union tried to force a unilateral merger of separately certified bargaining units for the purpose of negotiating uniform fringe benefits. In *Shell Oil Co.*, 194 NLRB No. 166 (1970), the Board found, relying on its decision here (now set aside by the court below), that the company's refusal to engage in such enlarged unit bargaining did not violate the Act. The union has now appealed that decision on the basis of the court of appeals opinion in the present case. A similar approach was utilized by the Industrial Union De-

7. See complaint issued by the Director of Region 11 of the Board in Case No. 5-CB-1279, attached hereto as Appendix B.

partment of the AFL-CIO in 1966 negotiations with Union Carbide Corporation; the I. U. D.'s goal there also, was "to force companies to negotiate major economic items on a national level." The result was strikes at eleven Union Carbide plants, which ranged from 44 to 246 days, involved 7200 hourly paid employees, the loss of $20.5 million in wages and cost the company almost $3.5 million in pre-tax income. 1967 Lab. Rel. Yearbk. 84, 85, 91.

As more and more unions in multi-unit companies learn the lesson taught by the court below, they also will seek to improperly enlarge their bargaining power by demanding enlarged unit bargaining. The cost will be industrial strife and economic dislocation. The Chamber submits, therefore, that the decision below is not only incorrect, but that it has severe, far-reaching economic consequences involving the very structure of the institution of collective bargaining. This Court should address itself to the legality of this serious national problem.

B. The Court Below Has Misconstrued the Controlling Decisions of This Court.

In reversing the Board, the Court below relied on four decisions of this Court.[8] Upon the basis of these cases, the Court sanctioned the enlarged-unit bargaining techniques of the Union on the ground that "the fact that a demand may have extra unit effects does not alter its status as a mandatory subject of bargaining." (App., p. A13.) In enunciating this rule, however, the Court below overlooked the fact that none of the cited decisions sanctioned unilateral enlarge-

8. *Fibreboard Paper Products Corp.* v. *N. L. R. B.*, 379 U. S. 203 (1964); *American Federation of Musicians* v. *Carroll*, 391 U. S. 99 (1968); *Teamster's Union* v. *Oliver*, 358 U. S. 283 (1959); *Allied Chemical Workers* v. *Pittsburgh Plate Glass Co.*, *supra*.

ment of the unit such as occurred in this case. *Fibreboard*, *Carroll* and *Oliver*, all arising in a subcontracting or unit preservation context, do not require a company to bargain about demands which enlarge a unit, but only to bargain about demands which, while having coincidental "extra-unit effects," concern the preservation of unit work or unit jobs.[9] Indeed, in *Pittsburgh Plate Glass*, this Court not only so limited *Fibreboard* and *Oliver* but indicated as well that "[o]ther considerations, such as the effect on the employer's freedom to conduct his business, may be *equally important*." 404 U. S. at 179, n. 19 (emphasis added).

In the instant case, the Committee did not seek to preserve unit work or jobs, but, rather, sought to enlarge the unit for its own bargaining advantage. Such an objective disregards the admonition of this Court in *Pittsburgh Plate Glass Co.* that an employer's bargaining obligation extends only "to 'terms and conditions of employment' in the unit 'appropriate to such purposes' which the union represents,"

9. In *Fibreboard*, the Court held that "replacement of employees in the existing bargaining unit with those of an independent contractor to do the same work under similar conditions of employment—is a statutory subject of collective bargaining under Section 8(b)." 379 U. S. at 215. In *Oliver* and in *Carroll*, this Court dealt with the question of whether certain combinations or agreements violated anti-trust laws. In *Oliver*, the Court found that a provision of a collective bargaining agreement regulating truck rental paid to independent truck drivers was a mandatory subject of bargaining and did not therefore violate Ohio's anti-trust law. The Court said that ". . . an inadequate rental might mean the progressive curtailment of jobs through withdrawal of more and more carrier-owned vehicles from service." 358 U. S. at 295. Similarly, in *Carroll*, this Court held that a labor agreement provision requiring an orchestra leader to charge a minimum price does not violate the Sherman Act because "the price list . . . has the objective to protect employees' job opportunities and wages from job competition of other union members . . ." 391 U. S. at 101-102.

and not to extra-unit bargaining. The area of unit determination is one which singularly involves Board expertise; its decisions are to be "accorded broad discretion." The objective must be one of grouping together only employees who have "substantial mutual interests" in order "to assure the coherence among employees necessary for efficient collective bargaining." 404 U. S. at 171-172. The decision below, it is submitted, disregards these principles.

C. The Decision Below Raises a Substantial and Recurring Question in the Administration of the Act.

Even assuming *arguendo* that the specific extra-unit demands of the Committee are mandatory bargaining subjects, such demands, when considered together with, and in the context of, the Committee's goal of company-wide bargaining, had the clear intent and effect of impermissibly enlarging the bargaining unit and of merging all of the Company's operations into a single unit. As the Court of Appeals for the Second Circuit pointed out in *N. L. R. B. v. General Electric Co.*, 418 F. 2d 736, 760 n. 15 (1969), *cert. den.*, 397 U. S. 965 (1970), in determining that an employer's overall conduct of negotiations was unlawful even though his individual actions considered alone were proper:

> . . . A policy . . ., innocent in and of itself, can in context become a vital part of an illegal overall pattern of conduct.

Similarly, in this case, the Committee's demands, when considered *in toto*, unilaterally enlarged the bargaining

unit.[10] The Committee's willingness to bargain separately at each location, as the Board recognized, was a sham. The items it demanded, if made part of a collective bargaining agreement, would necessarily have precluded separate unit negotiations, and would have effectively merged all of the Company's plants into a single overall unit. Before agreeing, for example, on a wage adjustment at any one plant in its operation, the Company would be constrained to consider its effect on all units; under the "most favored nation" clause, a more favorable wage adjustment would automatically be incorporated into a contract covering all other represented units. Similarly, if the proposed limited no strike clause were adopted, the Company could never make a decision to accept a strike at any one location without at the same time determining whether it could accept a strike at all of its other locations. To the same effect, the common expiration date demand would, as a practical

10. In enacting Section 9 of the Act, Congress established a detailed procedure for collective bargaining. An established bargaining unit cannot be altered by unilateral action of one of the parties, but only through mutual consent or through utilization of the Board's representation procedures. *International Longshoremen's Association (New York Shipping Association, Inc.)*, 118 NLRB 1841, 1843, enforcement denied on other grounds, 277 F. 2d 681 (D. C. Cir. 1960); *N. L. R. B.* v. *Montgomery Ward & Co., Inc.* 399 F. 2d 409, 412 (7th Cir. 1968); *Dauds* v. *I. L. A.*, 241 F. 2d 278, 282-283 (2nd Cir. 1957); *Central Soya Company Inc.*, 142 NLRB 930, 949; *Textile, Inc.*, 119 NLRB 1792, 1797-1798. Absent agreement, neither employer nor union "may attempt to force on the other an enlargement or merger of an established unit or units." *Shell Oil Co., supra*. Accord: *N. L. R. B.* v. *Hess Oil & Chemical Corp.*, 415 F. 2d 440, 444 (1969), cert. denied 397 U. S. 916 (1970); *The Standard Oil Company*, 137 NLRB 690, 691 (1962) enforced 322 F. 2d 40 (6th Cir. 1963). Indeed the antitrust, as well as the labor, laws are "clearly set against employer-union agreements seeking to prescribe labor standards outside the bargaining unit." *United Mine Workers* v. *Pennington*, 381 U. S. 657, 668 (1965). In sum, once the duty to bargain exists, change which "... denies the Board ... ultimate control, of the bargaining unit ... disrupts the bargaining process." *Dauds* v. *I. L. A.*, *supra* at 283.

matter, merge negotiations at all Company locations. Moreover, the Committee expressly refused to execute an agreement in any one unit until agreement was reached in all other pending negotiations. In short, under the decision below, the Company would no longer be negotiating on a unit-by-unit basis as required by Section 9 of the Act, but, as a matter of absolute economic necessity, would be compelled to negotiate with the unions on a company-wide basis."

CONCLUSION.

This case raises a recurring and substantial problem in the administration of the Act. It is an issue which, unless resolved by this Court, is likely to engender further severe economic dislocation. By considering this question, the Court's time will not be misspent. The petitions for writs of certiorari should be granted.

Respectfully submitted,

MILTON A. SMITH,
General Counsel,

OTTO F. WENZLER,
Labor Relations Counsel,
Chamber of Commerce of the
United States of America,
1615 H Street, N. W.,
Washington, D. C. 20006,

GERARD C. SMETANA,
925 South Homan Avenue,
Chicago, Illinois 60607,

LAWRENCE M. COHEN,
HERBERT M. BERMAN,
K. BRUCE STICKLER,
LEDERER, FOX AND GROVE,
111 West Washington Street,
Chicago, Illinois 60602,
Attorneys for the Chamber of Commerce of the United States of America.

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11. This result is wholly inconsistent with this Court's repeated warning that it "must not be guided by a single sentence or number of a sentence, but look to the provisions of the whole law, and its object and policy." *Pittsburgh Plate Glass*, 404 U. S. at 185, citing, *inter alia Mastro Plastics Corp.* v. *N. L. R. B.*, 350 U. S. 270 (1956).

APPENDIX A.

AFFIDAVIT

STATE OF PENNSYLVANIA
COUNTY OF LANCASTER } ss

I, L. J. Bibri, being first duly sworn on my oath depose and state as follows:

1. I am Vice President and Director of Employee Relations of the Armstrong Cork Company, Liberty and Charlotte Streets, Lancaster, Pa., 17604. I was employed as Director of Employee Relations during both the current and the 1970 contract negotiations when our company was confronted by a coalition of unions representing all 8 of our unionized plant locations under the leadership of the Industrial Union Department of the AFL-CIO.

2. On various dates between April 13 and August 2, 1972 plant managers at our Macon, Georgia, Jackson, Mississippi, Fulton, New York, Braintree, Massachusetts and Beaver Falls, Pennsylvania plants received from local unions representing these respective plants the following contract demands:

a) There shall be no strikes in the bargaining unit covered by this agreement during the life of this agreement; provided that this no-strike clause shall not be effective during any period in which employees are conducting a lawful strike in any other bargaining unit of the Company.

b) The termination date of this agreement be the same as the termination dates in other agreements negotiated by the Company in 1972.

c) When, during the term of this agreement, the Company negotiates an agreement covering any other

bargaining unit of the Company, the Union shall have the right, upon demand, to have any provision of said agreement incorporated into this agreement.

In support of these demands, the unions at Macon, Jackson and Fulton presented identical documentation citing in each instance the Third Circuit Court of Appeals decision of *AFL-CIO* v. *Joint Negotiating Committee for Phelps Dodge* v. *NLRB*, 79 LRRM 2939 (3rd Cir. 1972), petition for certiorari filed in Case Nos. 72-220 and 72-359 (S. Ct. Oct. term, 1972). At the other locations the same demands were presented in substance as part of basic contract proposals. While documentation was not offered, the demands were described as being of the same orgin as those listed above.

3. This tactic was merely a refinement of the demands made by the coalition in the 1970 negotiations, prior to the *Phelps-Dodge* decision, where, under the direction of the Industrial Union Department, separately certified unions at these plants located throughout the United States presented the Company with uniform demands for changes in the pension and insurance supplements in effect at those locations. In the negotiations which ensued, it became obvious to me, and the records so support, that the IUD's strategy was (a) to fail to reach agreement on both the supplement and the basic contract upon the expiration date at each of the plants in turn, and (b) to offer to work without a contract until all of the plant agreements in the company had expired so as to effect, if necessary, a multi-plant shut-down.

4. IUD representatives were frequently present at contract negotiations at each separate location. As a result of these union tactics, prolonged multi-plant strikes occurred at our plants as follows:

a) Macon, Georgia, September 3, 1970 to November 4, 1970;

b) Beaver Falls, Pennsylvania, August 15, 1970 to November 14, 1970;

c) Fulton, New York, August 19, 1970 to November 16, 1970;

d) Braintree, Massachusetts:

1. Production unit, August 25, 1970 to November 10, 1970;

2. Maintenance unit: August 26, 1970 to November 16, 1970;

e) Jackson, Mississippi: September 1, 1970 to November 7, 1970.

I have read the above affidavit consisting of this page and two other pages. It is true and correct to the best of my knowledge.

/s/ L. J. Bibri

APPENDIX B.

UNITED STATES OF AMERICA

Before the National Labor Relations Board Region 11.

	Cases Nos.
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, and ITS LOCALS 289, 2035, 1431 and 1087	11-CB-359
and	11-CB-359-2 (formerly 5-CB-1279)
GENERAL TELEPHONE COMPANY OF THE SOUTHEAST	11-CB-359-3 (formerly 10-CB-2141)
	11-CB-359-4 (formerly 26-CB-725)

ORDER CONSOLIDATING CASES, COMPLAINT, AND NOTICE OF HEARING

It having been charged in Cases Nos. 11-CB-359, 11-CB-359-2 (formerly 5-CB-1279), 11-CB-359-3 (formerly 10-CB-2141) and 11-CB-359-4 (formerly 26-CB-725), by General Telephone Company of the Southeast, herein called General Telephone, that International Brotherhood of Electrical Workers, AFL-CIO, and its Locals 289, 2035, 1431 and 1087, herein collectively called Respondents, have engaged in and are engaging in unfair labor practices effecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U. S. C. Sec. 151, *et seq.*, herein called the Act, and the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for the 11th Region, having duly considered this matter, and it being deemed necessary to

consolidate said cases in order to effectuate the purposes of the Act and to avoid unnecessary costs or delay,

IT IS HEREBY ORDERED, pursuant to Section 102.33 of the Board's Rules and Regulations, Series 8, as amended, that these cases be, and they hereby are, consolidated.

Upon said charges the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director, issues this Complaint and Notice of Hearing pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended.

1.

A copy of the charge in Case No. 11-CB-359 filed on June 29, 1972, was duly served upon International Brotherhood of Electrical Workers, AFL-CIO, herein called Respondent International, and International Brotherhood of Electrical Workers, Locals 1087, 289, 2035 and 1431, herein called Respondent locals 1087, 289, 2035 and 1431, respectively, by registered mail on June 29, 1972. A copy of the charge in Case No. 11-CB-359-2 (formerly 5-CB-2179) filed on June 28, 1972, was duly served upon Respondents by registered mail on June 29, 1972. A copy of the charge in Case No. 11-CB-359-3 (formerly 10-CB-2141) filed on June 28, 1972, was duly served upon the Respondents by registered mail on June 29, 1972. A copy of the charge in Case No. 11-CB-359-4 (formerly 26-CB-725) filed on June 29, 1972, was duly served upon Respondents International Brotherhood of Electrical Workers, Locals 1087 by registered mail on June 29, 1972, and Respondents Local 1431, Local 2035, and Local 289 on June 30, 1972.

2.

On July 27, 1972, the General Counsel of the Board, pursuant to Section 102.33 of the Board's Rules and Regula-

tions, Series 8, as amended, ordered that the aforesaid Case Nos. 5-CB-2179, 10-CB-2141, and 26-CB-725 be transferred to and continued in the 11th Region of the Board as Case Nos. 11-CB-359-2, 11-CB-359-3, and 11-CB-359-4, respectively.

3.

General Telephone is and has been at all material times herein, a Virginia corporation maintaining its principal office in Durham, North Carolina, with plants and exchanges in the States of North Carolina, Virginia, South Carolina, Tennessee, West Virginia, Alabama and Virginia, where it is engaged as a public utility in providing local and long distance telephone service to customers in each of these states.

4.

General Telephone has an annual gross income in excess of $1,000,000, and it provides toll call services valued in excess of $50,000 annually.

5.

General Telephone is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

6.

The Respondent International and Respondent Local 289, Local 1431, Local 2035 and Local 1087, are, and have been, at all times material herein, labor organizations within the meaning of Section 2(5) of the Act.

7.

All employees assigned to General Telephone's plant, commercial, engineering, accounting, budget, data coordination, marketing and traffic departments in its General Office and North Carolina Division, constitute a unit ap-

propriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. These employees perform line man, switch man and installation work in connection with General Telephone's, providing and maintaining telephone service for customers within the State of North Carolina.

8.

All employees assigned to General Telephone's commercial and engineering departments in its Charles Town-Rommey Districts of the West Virginia-Virginia Division, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. These employees perform line man, switch man and installation work in connection with General Telephone's providing and maintaining telephone service for customers within the State of West Virginia.

9.

All employees assigned to General Telephone's traffic and commercial departments in its South Carolina Division, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. These employees perform line man, switch man and installation work in connection with General Telephone's providing and maintaining telephone service for customers within the State of South Carolina.

10.

All employees assigned to General Telephone's traffic and commercial departments in its Tennessee Division constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. These employees perform line man, switch men and installation work in connection with General Telephone's

providing and maintaining telephone service for customers within the State of Tennessee.

11.

At all times since on or about 1955, and continuing to date, Local 289 has been a representative of the employees in the unit described in paragraph 7 above for the purposes of collective bargaining, and by virtue of Section 9(a) of the Act has been, and is now, the exclusive representative of all the employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

12.

At all times since on or about November 21, 1958, and continuing to date, Local 2035 has been a representative of the employees in the unit described in paragraph 8 above for the purpose of collective bargaining, and by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

13.

At all times since on or about April 1, 1968, and continuing to date, Local 1431 has been a representative of the employees in the unit described in paragraph 9 above for the purposes of collective bargaining, and by virtue of Section 9(a) of the Act has been, and is now, the exclusive representative of all the employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

14.

At all times since on or about 1957, and continuing to date, Local 1087 has been a representative of the employees in the unit described in paragraph 10 above for the purposes of collective bargaining, and by virtue of Section 9(a) of the Act has been, and is now, the exclusive representative of all the employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

15.

The following-named individuals occupy the positions in the labor organizations shown opposite their respective names, and are, and have been at all times material herein, agents of the respective labor organizations, within the meaning of Section 2(13) of the Act:

Thomas J. Murphy	— International Representative
Larry Kellaris	— International Representative
Arthur Holland	— President, Local 289
John Tyree	— President, Local 1087
Vernon W. Webster, Jr.	— President, Local 2035
E. J. Johnson	— President, Local 1431

16.

Since on or about March 5, 1972, and continuing thereafter, Respondents, despite the history of separate recognition of the respective locals in the respective units described above, and over the pretest of General Telephone, have insisted, with threat of strike, that General Telephone recognize a System Council as the exclusive collective bargaining representative of all the employees in the units described in paragraphs 7, 8, 9 and 10, above.

17.

Since on or about June 1, 1972, and continuing thereafter, Respondents have insisted, with threat of strike, upon a common expiration date for any collective bargaining agreements covering the employees described in paragraphs 7, 8, 9 and 10, above, in conjunction with their insistence on recognition of a System Council as described in paragraph 16, above.

18.

Since on or about June 1, 1972, and continuing thereafter, Respondents have insisted with threat of strike, that no collective bargaining agreement would be consummated for any one of the units described in paragraphs 7, 8, 9 and 10, above, unless agreements that all such units contained provisions for common expiration dates.

19.

Since on or about July 27, 1972, Respondents have engaged in a strike to require General Telephone to agree to their demands as set forth in paragraphs 16, 17 and 18, above.

20.

On or about May 22, 1972, Respondent Local 289 and General Telephone agreed upon all the terms and conditions of a collective bargaining agreement covering the employees in the unit described in paragraph 7, above, and General Telephone requested that Local 289 execute a written contract incorporating such agreement.

21.

Since on or about June 14, 1972, Respondent Local 289 has refused, and continues to refuse, to execute the collective bargaining agreement referred to in paragraph 20,

above, because it failed to provide for recognition of a System Council.

22.

By the acts described above in paragraphs 16, 17, 18, 19 and 21, above, the Respondents, and each of them, did refuse, and are refusing, to bargain collectively with an Employer, and thereby did engage in, and are engaging in, unfair labor practices affecting commerce within the meaning of Section 8(b)(3) and Section 2(6) and (7) of the Act.

23.

The acts of the Respondents described in paragraphs 16, 17, 18, 19 and 21, above, occurring in connection with the operation of the Employer described above in paragraphs 3, 4 and 5, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

24.

The acts of Respondents described in paragraphs 16, 17, 18, 19 and 21, above, constitute unfair labor practices within the meaning of Section 8(b)(3) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 22nd day of August, 1972, at 10 a.m., E. D. T., in the Federal Courtroom, United States Post Office, Durham, North Carolina, a hearing will be held before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedure in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

You are further notified that pursuant to Section 102.20 and Section 102.21 of the Board's Rules and Regulations, Series 8, as amended, you shall file with the Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four copies of an answer to the said complaint within 10 days from service thereof, and that unless you do so, all the allegations in the above complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at Winston-Salem, North Carolina, this 29th day of July, 1972.

/s/ REED JOHNSTON
Reed Johnston, Regional Director
National Labor Relations Board
Region 11
1624 Wachovia Building
Winston-Salem, North Carolina 27101